

**CITY OF MILPITAS
UNAPPROVED**

PLANNING COMMISSION MINUTES

June 28, 2006

**I.
PLEDGE OF
ALLEGIANCE**

Chair Williams called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Ali-Santosa, Azevedo, Ciardella, Galang, Mandal, and Williams
Absent: Tabladillo
Staff: Bejines, Carrington, Hom, Lowe and Williams

**III.
PUBLIC FORUM**

Chair Williams invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
June 14, 2006.**

Chair Williams called for approval of the minutes of the Planning Commission meeting of June 14, 2006.

Staff made the following changes to the minutes:

- Page 6, 2nd paragraph - Ms. Odoyle changed to Mrs. Fe Aurelia V. Doyle, 80 Lonetree Court
- Page 6, 6th paragraph – Mike Nuvutny changed to Mike Novotny, 36 Greentree Way
- Page 7, 4th paragraph – Dennis Smith, 500 Glenmoor Circle
- Page 8, 10th paragraph – Russ Barstow to Russ Bargstadt, 1307 Stardust Way

Commissioner Ali-Santosa made the following changes to the minutes:

- Page 4, 3rd paragraph- Before the speakers spoke, Commissioner Ali-Santosa requested the proximity of his or her address with respect to the applicant's store.
- Page 11, 4th paragraph - Commissioner Ali-Santosa said he is concerned after reading some of the letters provided in the packet because he felt they were misleading. For example one of the letters written said, "*by allowing Jerry's Market to sell liquor, I can do all of my shopping and pay my PG&E bill at this store*". The focus on the deliberation should be on the compatibility of land use, not opinions, not emotions, not speculation, but should be based on facts and data and evidence, by the people or stakeholders directly impacted such as the people behind the business. He has some concerns about allegations of wrongdoing and thinks the Commission needs to really take a hard look at that and doesn't think the Commission is ready to make a decision tonight. He also heard some unfairness about the notification process and thinks that needs to be addressed as well.

Motion to approve the corrected June 14, 2006 minutes.

M/S: Mandal/Ali-Santosa

AYES: 6

NOES: 0

**V.
ANNOUNCEMENTS**

Tom Williams, Planning and Neighborhood Services Director, announced that the Commissioners received the meeting minutes from the June 13th joint Planning Commission/City Council meeting and if there are any changes, let staff know by July 7th and they will forward the changes to the City Clerk's office.

Mr. Williams announced that July 4th at 11 a.m. is the City's Fourth of July parade. Immediately following the parade is a swim party at the Sports Center and at 8 p.m. is the beginning of the fire works show with a band playing at the actual fireworks starting at 9:30 p.m.

Mr. Williams introduced Kristine Lowe, new Associate Planner and welcomed her to the Planning Department.

Mr. Williams announced the subcommittee rotation schedule for July through September with Commissioner Tabladillo being the first active member, Chair Williams, second active member and Commissioner Ali-Santosa, alternate member.

Mr. Williams said a memorandum was distributed regarding Item No. 2 (Use Permit Amendment No. UA2006-6) including an E-mail from Mr. Bill Cilker, the owner of the adjacent commercial center.

Commissioner Azevedo said there was a diagram mentioned in the e-mail which was not included as part of an attachment. Mr. Williams said that Mr. Cilker will present that diagram to the Commission tonight.

Commissioner Mandal said that one of the items that came out of the joint City Council/Planning Commission meeting was that he is concerned about the City of Milpitas not taking a proactive role to provide alternative energy and would like staff to look at what other City's are doing and gather data such as cost estimates for permits. Time is going by and new construction is being done and now is the time to design alternative source of energy as part of the construction plan, depending on the outcome of the study.

Mr. Williams said that as a result of the meeting, City Council asked staff to do some preliminary investigation and is familiar with the LEED program, which is fast becoming the benchmark for green buildings. Staff is in the process of doing researching and will bring the information back to the Commission for review and a recommendation, and will move it forward to the City Council. Staff is anticipating bringing this forward to the Commission around October.

**VI.
CONFLICT
OF INTEREST**

Chair Williams asked if the Commission has any conflict of interest on tonight's agenda.

There were no Commissioners that identified a conflict of interest.

**VII.
APPROVAL OF
AGENDA**

Chair Williams called for approval of the agenda.

Commissioner Azevedo requested that Agenda Item No. 1 (Use Permit Amendment No. UA2006-3 and "S" Zone Amendment No. SA2006-13) be added to the consent calendar.

Motion to approve the modified agenda.

M/S: Azevedo/Galang

AYES: 6

NOES: 0

**VIII.
CONSENT CALENDAR
Item No. 1**

Chair Williams asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Staff had no changes to the consent calendar.

Chair Williams opened the public hearing on Consent Item No. 1.

There were no speakers from the audience.

Motion to close the public hearing on Consent Item No. 1.

M/S: Azevedo/Mandal

AYES: 6

NOES: 0

Motion to approve the consent calendar on Consent Item No. 1.

M/S: Azevedo/Mandal

AYES: 6

NOES: 0

***1. USE PERMIT AMENDMENT NO. UA2006-3 AND "S" ZONE**

AMENDMENT NO. SA2006-13: A request to install additional tract signage for new residential development located on the west and east side of South Abel Street between Corning and Curtis Avenue. (*Recommendation: Approve with Conditions*)

IX. PUBLIC HEARING

**1. USE PERMIT
AMENDMENT NO.
UA2006-6**

Cindy Hom, Project Planner, presented a request to add a 12' x 18' dance floor for an existing restaurant located at 269 W. Calaveras Boulevard and recommended approval with conditions based on the findings in the staff report.

Commissioner Azevedo said the Commission can't do anything about the parking problem other than impose special conditions and Ms. Hom said yes.

Commissioner Azevedo asked if the Commission could request signage and a parking monitor on certain days and Mr. Williams said that it is within the purview of the Commission to do that because this is a discretionary permit for the conditions under which the use operates.

Commissioner Mandal said that since this is a request for dancing and singing, were the neighborhood notified. Ms. Hom said the neighbors within 300 feet of the business were notified. Staff did receive one phone call asking for more information and an e-mail from Bill Cilker, adjacent owner.

Vice Chair Galang needed clarification on special condition no. 3 which reads below:

3. Dancing is prohibited as a nightly use and shall be limited for banquet occasions only. (P)

Ms. Hom said the intent of the condition is to prevent it from becoming a nightclub, which would not be a compatible use within the area.

Vice Chair Galang asked if they sell liquor, beer and wine and Ms. Hom said yes but there is no bar.

Vice Chair Galang needed clarification on special condition no. 4 that reads below:

4. Associated live entertainment and pre-recorded music used in conjunction with the dance floor shall be limited so that the sound shall be confined to the interior of the structure; and further that when the live entertainment is performed, all windows and doors within the facility shall be closed, except when entering and leaving by the main entrance of the facility. That any entertainment (live, disc jockey, etc.) provided shall not disturb any nearby business and shall not be audible outside of the building. (P)

Ms. Hom explained that pre-recorded music is DJ music and a live band is classified as live entertainment.

Vice Chair Galang asked if live music could be heard outside of the restaurant. Ms. Hom said that according to the special conditions, live music cannot be audible outside of the building, and when the dance floor is being used and music is being played, the doors must be closed and rules must comply with the Milpitas Municipal Code and the noise ordinance. Also, the restaurant closes at 10 p.m.

Vice Chair Galang suggested that the applicant add double swing doors to prevent the noise from drifting out of the restaurant. Mr. Williams said that might be a building code issue.

Vice Chair Galang asked if the applicant or owner will provide security. Ms. Hom said that if the reception event was large in size, it would be the responsibility of the applicant to submit a security plan to the police and planning department.

Commissioner Ciardella asked how often does code enforcement go out to the restaurants and make sure there are enough chairs for the occupants. Mr. Williams said that only if the City receives a complaint will the Fire Marshall and code enforcement go out to the site.

Commissioner Ciardella said that if he was the owner, he would be tempted to move the chairs around to make room for the dance floor. He was concerned about the size of the place and was concerned about a band being able to fit inside the restaurant. He counted the number of chairs and it was a little less than 100.

Ms. Hom deferred the question to the applicant.

Commissioner Mandal said that he concerned about parking because whenever he visits the shopping center, the parking is very full and asked staff about the results of the parking study. Ms. Hom said that part of the 2003 approval, in order to substantiate the parking reduction they had was to provide a parking study. Through that study, they had identified that there was enough parking to accommodate the use. Additionally, staff did include a condition of approval no. 26 which reads below:

26. Prior to issuance of building permits, plans shall include "no parking" signs along the western access way to the rear parking area to the approval of the City. (P) Previous Conditions of Approval

Commissioner Azevedo asked since 2003, how many more businesses have gone into the previous bank location and Ms. Hom said three restaurants.

Commissioner Azevedo felt that part of the problem was adding new businesses on the site when there is a parking problem.

Chair Williams asked if the parking behind Save Mart is available and Ms. Hom said yes.

Chair Williams said that he is concerned that the partying will concern homeowners. He asked if there were any studies done relative to evening or lunchtime parking on the Calaveras side close to Burger King. Ms. Hom said that in terms of the parking study it would be inclusive of the entire site.

Chair Williams introduced the applicant.

Eddie Shen, Architect for King Crab, representing Mr. Peter Chen, 102 Persian Drive, Sunnyvale. Mr. Shen said that all of the restaurants were built about the same time and the parking was studied at that time, and there were ample vacant spots during 2003. He believes that the economy is getting better, and as far as parking is concerned, there seems to be available parking on the other side of Burger King, however people are lazy and don't want to walk. He pointed out that the dance floor is strictly for a wedding or baby shower and only light music will be played. There will not be daily entertainment.

Commissioner Azevedo asked where will the music band be and Mr. Shen said on the side.

Commissioner Azevedo asked what the property owner has done about people parking on the property next to the business. Mr. Shen said that Mr. Chen has a sign already that informs patrons not to park on the other side.

Commissioner Azevedo said King Crab is a good establishment however the problem is the businesses keep expanding and there is not enough parking.

Commissioner Ciardella suggested that the band speakers be faced towards the kitchen instead of the parking lot. Mr. Shen said that it is the responsibility of the owner to control the sound.

Vice Chair Galang said that he supports the project and asked what type of material is the dance floor made of and Mr. Shen said that it is a hardwood floor and is permanent.

Chair Williams said that the owner has an existing sign to advise patrons to not park in the area however he is curious and concerned about why the signs are not effective. He said that it is about everyone wanting to be close to where they go and it does present a problem for anything that is going to increase in size such as an event or wedding. He asked when will the wedding functions be taken place. Mr. Shen said on Fridays, Saturdays and Sundays.

Mr. Shen reiterated that there will not be an increase in seating and is already limited to what has been approved. Chair Williams said he understands however at wedding functions, there are a number of people arriving at the same time versus a sandwich shop where people stagger in at different times.

Commissioner Ali-Santosa asked if it would be appropriate to have a sign that states additional parking available on the other side of the parking lot and Mr. Shen said that it is already there.

Commissioner Azevedo said the problem with the signage is that customers will cooperate however the landowner should be cooperative as well. Mr. Shen asked how do you monitor something like that.

Vice Chair Galang suggested that the owner have a trial run of loud music to hear how loud the noise is outside so that he control the music during a function. Mr. Shen reiterated that is the owner's responsibility to control the noise.

Commissioner Mandal asked if there is a different kind of permit required for karaoke. Ms. Hom said that live entertainment encompasses amplified music, karaoke and dancing.

Commissioner Mandal said that something needs to be done to mitigate the noise. He asked if in the back of the building, the back door opens up which blasts the noise towards the neighborhood, is that mitigated. Ms. Hom said that there is a condition of approval that requires all windows and doors be closed when a dance is in operation.

Commissioner Ciardella asked if the dance floor will be at the same level with the main floor and Mr. Shen said yes.

Vice Chair Galang asked if on a Friday or Saturday evening if an event is not taking place, will music be played. Mr. Shen said light music will be played and there will not be dancing.

Chair Williams opened the public hearing.

Bill Cilker, 524 Vista Ridge Drive, Milpitas Shopping Center owner, next to Calaveras Plaza Shopping Center, said that parking is a main problem during lunchtime and he has done way more above and beyond what should be done by telling patrons of Calaveras Plaza Shopping Center not to park in his center. He has the right to tow people but hasn't done it. He would like to see the landowner hire someone to walk up and down telling people to move. He also suggested that maybe employees can park in back of the businesses and leave the parking open for tenants.

Commissioner Azevedo asked how many parking spaces is the center short of. Mr. Cilker said that part of the problem is that the parking to the west is paid for by Kelly Moore, Party City and Milpitas Shopping Center and includes the upkeep, cleaning, maintenance and striping. Calaveras Plaza does not pay for any of that. Since the new restaurants have come in, Milpitas Shopping Center has had to up the amount of cleaning because of more people parking there. He doesn't mind the crossover however he felt that there needs to be relief in the number of spaces the patrons occupy because the Milpitas Shopping Center businesses are suffering.

Commissioner Azevedo asked if there are parking spaces available near Burger King and Mr. Cilker said he is not sure.

Commissioner Azevedo said that if the Commission were to request a parking monitor, what would be the best time to do it. Mr. Cilker said lunchtime because that is the busiest time of the day.

Commissioner Ciardella asked if Mr. Cilker felt that the cars are coming from Calaveras Blvd. or Abbott. Mr. Cilker said the majority of cars that park in his center are from Abbott and he has put up signs but they do not help a whole lot.

Chair Williams asked if the patrons are more for Lee's Sandwiches or King Crab. Mr. Cilker said it is hard to know but he would say the first row of parking tends to be King Crab and then the other row is for the sandwich shop. The sandwich shop has more turnover and King Crab patrons stay longer.

Commissioner Mandal is concerned that Mr. Cilker has to monitor the parking lot. Mr. Cilker said that it started when Lee's sandwiches opened up, and then King Crab opened up.

Commissioner Mandal asked if Mr. Cilker has tried to talk to the property owner and maybe put a wall there. Mr. Cilker said that the property owner will not return his calls and he did talk to her about putting up a fence up however she threatened to block it off completely. He felt that asking people to move will keep it open enough so as not to take drastic measures such as putting up a wall.

Commissioner Mandal said he is not suggesting a wall he just wanted to see where this has gone with the property owner. Mr. Cilker said that he is tempted to put a construction wall up and get the point across. When he talked to Lee's sandwiches and King Crab they said it is the property owner's problem not theirs. The property owner did put a sign up that says no restaurant parking beyond here but it is not in the best location.

Commissioner Azevedo needed clarification about the parking sign. Mr. Cilker said that there is a sign on the left side of his property with the arrow pointing to the back of the building near the alley.

Mr. Shen suggested putting up cones on the property line during lunchtime

Close the public hearing

Motion to close the public hearing.

M/S: Mandal/Azevedo

AYES: 6

NOES: 0

Chair Williams commented that there has always been problems with the property owner and neighbors complaining about noise and issues and it has been very difficult for staff to work with the property owner. He sees this as a systemic issue because there are various developments in the area and it not fair for the property owner to burden the tenants in trying to condition the property owner to do something. Staff had to get the property owner involved in the last situation and it took a couple of sessions for the property owner to cooperate. He doesn't want King Crab to lose business however he felt that the property owner should be involved.

Commissioner Azevedo asked how staff can get the property owner involved. Mr. Williams said that the issue at hand is for this specific business and is not for the shopping center so the Use Permit is the only tool staff has for the operation of the business. If there was a code enforcement issue such as deficient parking, staff could move forward through code enforcement so the parking lot is in compliance and there are currently 69 parking spaces they are deficient. In terms of managing the program, his recommendation is moving towards the direction of a parking monitor.

Commissioner Azevedo said that sooner or later the Commission needs to take a stand because the property owner is the one who is collecting the money and does not get involved in the process.

Mr. Williams said that the issue is if this amendment they are applying for impacts parking.

Commissioner Ciardella suggested that if you drive down Calaveras and make a right turn into the shopping center and if there wasn't so much parking on the right hand side and if that planter box was opened up, and then have a sign that says restaurant parking, could possibly provide two or three parking spots and might alleviate the parking problem.

Commissioner Azevedo said that the Commission has tried doing that in the past but hasn't been able to do that because of Caltrans and the property owner.

Commissioner Ciardella said he is trying to help the other shopping center with the problem of parking and for the restaurant to have to put a monitor up there, doesn't think it is fair.

Commissioner Mandal said he is supportive of a restaurant trying to expand and promote business and bring more dollars to the area. Then he drives to the City and on every parking lot there are tow away signs if you are not the customer of the establishment. He doesn't think those signs would be effective in Milpitas and felt that it is a tough situation to hire a parking monitor full time during the week. He would like to see the property owner do this and asked if the Commission could condition the property owner. Mr. Williams said the Commission cannot do that.

Mr. Williams said if the property owner comes in for an improvement or expansion to a building, let's say in this situation there is an existing building and King Crab wants to expand, with that expansion, not only would the Commission be conditioning King Crab but would also condition the property owner. But since this is a use permit for the operation of a specific restaurant, the Commission is limited in the ability to add additional site requirements or existing conditions that are not applying for the permit.

Chair Williams said he is concerned because if the applicant has an event and he tells everyone to park on the Calaveras Plaza side, then the patrons from Lee's Sandwiches will park in the Milpitas Shopping Center, so there is a situation of overflow of parking. He is leaning towards a motion to deny the permit on the basis of the parking problem and would almost deny any future activities of this property because of the lack of cooperation of the property owner who hasn't shown diligence or wanting to cooperate.

Vice Chair Galang said that if there was an event at King Crab, his first choice would be to park near King Crab, if not, he would have to go around on the west side of King Crab near Kelly Moore, especially if there are no signs that say no parking.

Mr. Williams said that if the Commission chooses to deny the application it would be because the use is incompatible with finding no. 3 that reads below:

3. The proposed project will not create any negative community impacts or be detrimental to public health, safety and general welfare. The dance floor is an ancillary use to the primary restaurant use and will not impact parking, noise, or odors.

Commissioner Mandal asked if finding no. 3 is based on fire department or police department codes. Mr. Williams said that the Commission needs to find that because if there is deficient parking, it creates a negative impact to the community and the Commission finds that the dance floor will impact parking.

Commissioner Ali-Santosa said that when looking at the parking situation, it is a pre-existing condition and asked if the Commission takes that into account. Mr. Williams said that the Commission needs to ask themselves if by approving this use permit amendment, does the Commission believe that the parking will exacerbate the problem, and if the Commission believes that, then that is the grounds for which the Commission can deny the project.

Motion to deny Use Permit Amendment No. UA2006-6 because it is incompatible with finding no. 3.

M/S: Azevedo/Ciardella

AYES: 6

NOES: 0

Commissioner Azevedo said that he recommended denial because of lack of cooperation from the property owner and lack of parking. He really sympathizes with the applicant and asked Mr. Shen to express his feelings to the applicant

**X.
ADJOURNMENT**

Mr. Williams announced that the election of officers for Chair and Vice Chair would be held at the July 12th Commission meeting.

The meeting was adjourned at 8:32 p.m. to the next regular meeting of July 12, 2006.

Respectfully Submitted,

Tom Williams
Planning and Neighborhood Services
Director

Veronica Bejines
Recording Secretary